October 27, 1999

Mr. James J. Savage
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-3032

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128463.

Harris County (the "county") received three similar requests for all information related to three specified individuals; the requests included authorization by the subject individuals to release the requested records. *See* Gov't Code § 552.229. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have supplied a representative sample of the responsive information to this office for review.[1] We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The county must meet both prongs of this test for information to be excepted under section 552.103(a)
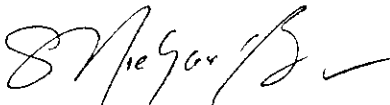
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[1] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that the subject information relates to a pending case in which the county is a named defendant. You have supplied pleadings in the case *Rashad Jade Gordon v. State of Texas, et. al.*, No. H-98-0394 (S.D. Texas, filed February 11, 1998). As regards the relatedness prong of the 103(a) test, "ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.). From our review of the submitted pleadings and information, we conclude that the information relates to the issues of that case. Therefore, the subject information may be withheld under section 552.103(a) of the Government Code.

However, absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 128463

Encl.   Submitted documents

cc: Ms. Elaine B. Roberts
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(w/o enclosures)